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FCC MAIL SECTION

Federal Communications Commission

DA 96-1629

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DISPATCHED BY
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Augusta, Gibson and Thomson, Georgia)

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MM Docket No. 96-203
RM-8871

NOTICE OF PROPOSED RULE MAKING

Adopted: September 27, 1996

Released: October 4, 1996

Comment Date: November 25, 1996

Reply Comment Date: December 10, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Wilks Broadcast Acquisitions, Inc. ("petitioner") requesting the substitution of Channel 269C3 for Channel 272A at Augusta, Georgia, and the modification of its license for Station WEKL to specify the higher powered channel. To accommodate the allotment at Augusta, petitioner also requests that Channel 232A be substituted for Channel 269A at Thomson, Georgia, the license of Station WTHO be modified to specify the alternate Class A channel, and that vacant and unapplied-for Channel 232A be deleted from Gibson, Georgia.

2. Petitioner states that the public interest would be served by allotting Channel 269C3 to Augusta since it could enable Station WEKL to increase the population it serves from its present 319,819 persons in a 2,565 square kilometer area to 387,777 persons in a 4,704 square kilometer area. Further, it states that the modification of Station WTHO to specify operation on Channel 232A would enable the station to serve 41,543 people instead of its present 40,650 persons. As to the deletion of Channel 232A from Gibson, petitioner points out that the channel was allotted to Gibson in May, 1992, but has remained unused since that time.

3. We believe petitioner's proposal warrants consideration since the substitution of Channel 269C3 for Channel 272A at Augusta would provide the community with an additional wide coverage area FM service and enable Station WEKL to provide service to a larger area and population. As requested, we also propose to modify Station WEKL's license to specify operation on the higher class channel. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 269C3 at Augusta or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. It is not necessary to issue an Order to Show Cause to the licensee of Station WTHO, Camellia City Communications ("CCC"), since it has agreed to the substitution

of channels and change of transmitter site. Petitioner has appended a letter from D. Michael Wall, President of CCC, attesting to its willingness to these changes. Finally, we also propose to delete vacant and un-applied for Channel 232A from Gibson unless an intent to apply for the channel is expressed during initial comments herein.

Technical Summary

4. Channel 269C3 can be allotted to Augusta in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.3 kilometers (7 miles) west of the community and Channel 232A can be allotted to Thomson with a site restriction of 3.9 kilometers (2.4 miles) west of Thomson.¹

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Augusta, Georgia	272A, 276A, 282C, 289C	269C3, 276A 282C, 289C
Gibson, Georgia	232A	--
Thomson, Georgia	269A	232A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before November 25, 1996, and reply comments on or before December 10, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John Crigler, Esq.
Haley Bader & Potts, P.L.C.
4350 North Fairfax Drive, Suite 900
Arlington, Virginia 22203-1633
(Counsel to petitioner)

¹ The coordinates for Channel 269C3 at Augusta are 33-28-20 North Latitude and 82-05-18 West Longitude. The coordinates for Channel 232A at Thomson are 33-27-26; 82-32-31.

8. IT IS ORDERED, That the Commission SHALL SEND a copy of this Notice of Proposed Rule Making by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the licensee of Station WTHO, as follows: Camillia City Communications, Station WTHO, 788 Cedar Rock Road, N.W., P.O. Box 900, Thomson, Georgia 30824.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission,

Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.